

General Information Letter. Compensation of nonresident employee who provides no services in Illinois and is not directed or controlled from Illinois is not subject to Illinois income tax.

September 14, 1998

Dear:

This is in response to your letter dated August 28, 1998, in which you request a General Information Letter. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department.

Although you have not specifically requested either type of ruling, the information you have provided requires that we respond with a general information letter.

In your request you stated:

My employer, xxx, which is wholly owned by xxxxxxxx xxxxxxxxxxxxxx xxxxxxxxxxxxxx of Chicago (which is wholly owned by xxx xxxxxxxxxxxxxx) is reporting any 1996 and 1997 wages as being earned in Illinois. I am the Southeast Region Manager for xxx, my job is to call on clients in the southeastern United States. I live in xxxx xxxxxx, Florida. I have never lived or worked in Illinois. Therefore, it is impossible for me to have Illinois wages. I am paid by xxxxxxxx, who uses xxx to process their payroll and do the reporting. I have contacted my employer, who has acknowledge that I do not work in Illinois (see DMI letter), but for some reason refuses to correct the W-2's (see copy). I fear that in the future Illinois will contact me wanting to know why I did not file an Illinois income tax return. Therefore, I am requesting confirmation from your department of action that needs to be taken to resolve the problem for the 1996, 1997 and future W-2's that may be filed in error.

#### **Department Analysis**

As shown by your 1997 W-2, your employer is no longer withholding Illinois income taxes from your salary. However, the W-2 indicates that your salary is subject to Illinois income taxes in box 16. Based upon the information provided in your letter, your employer should not be withholding Illinois income taxes from your paycheck, and should not be reporting that your salary is taxable in Illinois.

Merely having an employer based in Illinois does not create sufficient nexus between an employee of that company and Illinois if that employee does not live in Illinois and works in another state. Withholdings from income are required under section 701 of the Illinois Income Tax Act ("IITA") which states in part:

(a) In General. Every employer maintaining an office or transacting business within this State and required under the provisions of the Internal Revenue Code to withhold a tax on:

(1) compensation paid in this State (as determined under Section 304 (a) (2) (B) to an individual;

The question thus becomes whether you are receiving "compensation paid in this State." Section 304(a)(2)(B) defines such compensation as:

(i) The individual's service is performed entirely within this State;

(ii) The individual's service is performed both within and without this State, but the service performed without this State is incidental to the individual's service performed within this State; or

(iii) Some of the service is performed within this State and either the base of operations, or if there is no base of operations, the place from which the service is directed or controlled is within this State, or the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State. Beginning with taxable years ending on or after December 31, 1992, for residents of states that impose a comparable tax liability on residents of this State, for purposes of item (i) of this paragraph (B), in the case of persons who perform personal services under personal service contracts for sports performances, services by that person at a sporting event taking place in Illinois shall be deemed to be a performance entirely within this State.

If, as you state in your letter, you have never lived or worked in Illinois, you would not be earning "compensation paid in this State." Accordingly, no Illinois income tax should be withheld from your salary, and no W-2 showing Illinois taxable income should be filed under section 703-704 of the IITA with respect to your salary.

As regards Illinois income taxes already withheld from your paycheck for 1996, you must file an Illinois income tax return in order to obtain a refund of these amounts, if you have not already done so. I have enclosed a 1996 IL-1040 for your convenience.

I hope that this has been helpful to you. If you have additional questions please feel free to contact me at the above address.

Sincerely,

Charles E. Matoesian  
Associate Attorney (Income Tax)